

BEFORE THE
GOVERNING BOARD OF
SAN CARLOS ELEMENTARY SCHOOL DISTRICT
COUNTY OF SAN MATEO, CALIFORNIA

In the Matter of the Accusation Against:

COLYN FISCHER and DUSTYN
WOROPAY,

Respondents.

OAH No. 2011031444

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in San Carlos, California on April 28, 2011.

Tami Essis Culkar, Attorney at Law, Dannis Woliver Kelley, represented complainant Kelly Price, Assistant Superintendent of Personnel and Chief Business Official, San Carlos Elementary School District.

Bill Empey, Chapter Service Consultant, California Teachers Association, represented respondents Colyn Fischer and Dustyn Woropay, who were present.

The matter was submitted for decision on April 28, 2011.

FACTUAL FINDINGS

1. Kelly Price made the accusation in her official capacity as Assistant Superintendent of Personnel and Chief Business Official, San Carlos Elementary School District.

2. Respondents Colyn Fischer and Dustyn Woropay are certificated employees of the district.

3. On March 15, 2011, Assistant Superintendent Price gave written notice to certificated employees, including respondents, of the recommendation that their services would be reduced or eliminated for the 2011-2012 school year. Each notice set forth the reasons for the recommendation.

4. Respondents, and another certificated employee whose notice has been rescinded, filed timely requests for a hearing to determine if there is cause for reducing their

services for the 2011-2012 school year. An accusation was served on each respondent, and each filed a notice of defense. All prehearing jurisdictional requirements for respondents have been met.

5. On March 10, 2011, the Governing Board of the San Carlos Elementary School District adopted Resolution No. 13;10/11. The Board resolved to reduce or discontinue the following services for the 2011-2012 school year:

<u>Services</u>	<u>FTE¹ Reduction</u>
Middle School 5-8 Core	2.00
Middle School Computer Elective	0.20
Middle School Orchestra	0.60
Middle School Math	0.20
Total	3.00 FTE

6. Since the resolution was issued, the district has determined that it will reduce Middle School Orchestra by only 0.20 FTE.

7. Assistant Superintendent Price's recommendation and the Board's resolution were required by the district's financial circumstances. The district is facing a \$2.35 million budget shortfall. The shortfall may be reduced or eliminated if a May 2011 parcel tax measure passes and/or by sufficient state revenues, a matter which has yet to be determined for the ensuing school year.

8. The services set forth above are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. None of the reductions is for a mandated service.

Respondent Fischer

9. Respondent Fischer holds a Preliminary Single Subject Credential in Music with an EL authorization. He has a seniority date of August 21, 2009, and is a probationary employee of the district. Respondent holds a 0.60 FTE position, and teaches Orchestra at Central Middle School. By reason of the 0.20 FTE reduction in Middle School Orchestra, respondent's Fischer's position will be reduced to 0.4 FTE. No probationary certificated employee with less seniority than respondent is being retained to provide a service which he is credentialed and competent to render.

10. Respondent Fischer currently teaches three sections of Orchestra. He believes it will be detrimental to the advancement of his Orchestra students if his services are reduced to two sections, thereby requiring mixing students with varying levels of ability and perhaps

¹ Full-time equivalent reduction.

not permitting all interested students the opportunity to participate in Orchestra. The wisdom of the board's decision to reduce Orchestra by one section is not a proper challenge to the validity of this layoff proceeding.

Respondent Woropay

11. Respondent Woropay holds a Preliminary Single Subject Credential in Social Sciences with an EL authorization. He has a seniority date of January 20, 2009, and is a probationary employee of the district. Respondent holds a 1.0 FTE position, and he teaches Social Studies, History, Computers and Physical Education at Central Middle School. By reason of the 0.20 FTE reduction in Middle School Computers, respondent Fisher's position will be reduced to 0.8 FTE. No probationary certificated employee with less seniority than respondent is being retained to provide a service which he is credentialed and competent to render.

12. Respondent Woropay does not believe that the reduction in services makes sense in light of the numbers of students entering middle school. The wisdom of the board's decision to reduce services is not a proper challenge to the validity of this layoff proceeding.

Conclusion

13. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

LEGAL CONCLUSIONS

1. All of the jurisdictional requirements of Education Code sections 44949 and 44955 have been met in this proceeding.

2. Because of the reduction or elimination of particular kinds of services set forth in Finding 5, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will be reduced for the 2011-2012 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

RECOMMENDATION

Notice may be given to respondents Colyn Fischer and Dustyn Woropay, that their services will be reduced for the 2011-2012 school year.

DATED: May 3, 2011

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings